

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *cg* D.C.
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MARCUS KANARD PAYNE,

)

Plaintiff,

)

v.

)

TIPTON COUNTY, TENNESSEE, et al.,

)

Defendants.

)

)

No. 05-2310 Ma/P

THOMAS W. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENNESSEE
MEMPHIS

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Before the court is a Motion to Dismiss filed on June 17, 2005, by Defendants Tipton County, Tennessee ("the County"), Tipton County Sheriff's Department ("the Department"), Sheriff C.D. Lewis ("Lewis"), in his official capacity, and Captain J.B. Mitchell ("Mitchell"), in his official capacity. In their motion, Defendants assert that the claims against the Department should be dismissed because it is not an entity that can be sued, that the claims against Lewis and Mitchell should be dismissed because an action against them in their official capacity is an action against the County, which is already a party to the suit, and that the demand for punitive damages should be dismissed because such damages are not available against a government entity.

Plaintiff Marcus Kanard Payne ("Payne") filed a response on July 14, 2005, conceding all of Defendants' arguments to be

correct. Therefore, Defendants' Motion to Dismiss the claims against Defendants Tipton County Sheriff's Department, Sheriff C.D. Lewis, in his official capacity, and Captain J.B. Mitchell, in his official capacity is GRANTED. The Motion to Dismiss Payne's demand for punitive damages is also GRANTED.

So ordered this 28th day of November 2005.



SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 27 in case 2:05-CV-02310 was distributed by fax, mail, or direct printing on December 1, 2005 to the parties listed.

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Honorable Samuel Mays
US DISTRICT COURT